



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE NO. 38 OF 2009

LESIIT J.

REPUBLIC.....PROSECUTOR
VERSUS
GEOFFREY KARWANDA.....1ST ACCUSED
SAMWEL KINYUA.....2ND ACCUSED
JAPHET MUTUGI.....3RD ACCUSED

RULING

The three accused Geoffrey Karwanda, Samwel Kinyua and Japhet Mutugi face one charge of murder contrary to section 203 of the Penal Code. It is alleged that on 29th day of March, 2009 at Kathuri Village, in Maragwa Location in Tharaka District within the Eastern Province jointly with others before court murdered KENNETH KIREMA.

They were accused were initially tried by Hon. Emukule Judge who heard from witnesses. When I took over the hearing of the murder I took direction under section 201(1) of the Criminal Procedure Code. The accused persons opted to have the matter start afresh which I did.

The prosecution in this retrial called four witnesses PW1 and 3 were police officers who were among the first to visit the scene. Their evidence was that they received the report of the presence of a dead body at Maragwa Location. The report was received on 30th March, 2009 one day after the incident. They proceeded to the scene and found the body of the deceased. They interviewed some eye witnesses who included the wife of the deceased. They carried away the body. They also collected some arrow weeds and shaft at the scene. PW3 arrested the 1st accused on 5th April, 2009 at Maragua, and the 2nd and 3rd accused on the 7th April 2009.

PW2 said that he was walking within Kiruma on 29th March, 2009 when he heard the wife of the deceased screaming. He interviewed her and she informed him the people who had murdered her husband. He also saw the body. It had arrow wounds on the left chest, left inner thigh and left wrist. PW2 said he saw the 2nd and 3rd accused and two others not in court carrying bow and arrows and running from the scene.

PW4 was the doctor who produced the post mortem form on behalf of Dr. Macharia. The results of the post mortem examination were that the deceased had stab wounds on the left chest medial aspect of left thigh and right wrist. The cause of death was haemorrhage which led to hypolemic shock.

Mr. Mungai for the State indicated that a fifth witness had come to the court to testify but that he

disappeared just before he was called to the witness box.

The evidence adduced by the prosecution was mainly that of formal witnesses. The only witness who not formal received information about the persons who committed the offence. He did not have any personal knowledge of who the culprits were. The wife of the deceased who gave him the names was not called as a witness. No explanation was given for the failure. She was a witness at the original trial. It was alleged by PW1 that the wife of the deceased was an eye witness of the incident. Failure to call her or others who witnessed the incident means that there is no evidence before the court showing how the deceased met his death.

I find that the prosecution failed to establish a prima facie case against all the three accused persons. That being the case there is no basis upon which I could place them on their defence.

Having come to the conclusion I have of the case, I acquit all three accused of murder as charge under section 306 of the CPC.

DATED, SIGNED AND DELIVERED THIS 17TH DAY OF NOVEMBER, 2011

J. LESIIT
JUDGE